



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3644 FAX (603) 271-2181



September 25, 2003

Evans Group Inc.  
Attn: Douglas R. Evans  
PO Box 246  
Lebanon, New Hampshire 03766-0246

**NOTICE OF NON-COMPLIANCE and  
PERMIT REVOCATION – NCPR # 03-012**

RE SUNAPEE, EVANS EXPRESSMART, EXISTING UNDERGROUND STORAGE  
TANK FACILITY (UST #A-0113451) (DES #199711058)

Dear Mr. Evans

The New Hampshire Department of Environmental Services (“DES”) is hereby notifying you that the above-referenced facility, located at Route 11, Sunapee, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On July 15, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation (“Notice”) will result in revocation of your Permit-to-Operate on December 24, 2003. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires spill containment devices to be installed and maintained in good working order on all UST systems. DES has determined that the required spill containment devices were not maintained in good working order. The spill containment devices for the 8,000-gallon gasoline and 8,000-gallon split gasoline UST systems (Tanks 4 and 5 respectively) shall be repaired to enable the devices to collect and hold a minimum 5-gallon spill during a product delivery. Documentation of the repair shall be provided to DES.

Env-Wm 1401.25 requires overfill protection devices to be installed and maintained in good working order on all UST systems. DES could not determine that the overfill protection device for Tank 4 was installed at the required 95% shut off level. Provide documentation that the overfill protection device for Tank 4 was installed at the required 95% shut off level. DES has determined that the overfill protection device for Tank 5 was not installed at the correct 90% alert level. The overfill device for Tank 5 must be set at the correct 90% alert level and documentation of the installation shall be provided to DES.

2. Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.31 requires leak monitoring equipment and devices to be maintained in good working order at all times to continuously perform their original design function and to be tested annually for proper operation. DES has determined that the leak monitor for Tanks 4 and 5 was in alarm condition and the tank systems were not temporarily closed. Provide leak monitor replacement or maintenance records or notify DES that the tank systems are temporarily closed. DES has determined that the annual test documentation was not available for the tank leak monitoring equipment and devices. The annual test documentation for the tank leak monitoring equipment and devices for Tanks 4 and 5 shall be provided to DES.

3 Env-Wm 1401.33 Corrosion Protection for Piping

Env-Wm 1401.33(b) requires all existing metal piping that routinely contains regulated substances and is in contact with the soil or other backfill material shall be protected from corrosion no later than December 22, 1998. DES has determined that the steel piping under the dispensers was in contact with the soil and not protected from corrosion. Corrosion protection installation documentation, a corrosion protection plan, or proof that the piping under the dispensers is isolated from the soil shall be provided to DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0113451) shall be revoked effective **December 24, 2003**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this

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facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.


You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

  
**COPY**  
Lynn A. Woodard, P.E.  
Supervisor  
Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0585 2207

cc: Michael P. Nolin, Commissioner  
Mark Harbaugh, DES Legal Unit  
Fred McGarry, P.E., Chief Engineer, WMD  
George Lombardo, P.E., WMD  
Tom Beaulieu, WMD  
Health Officer, Town of Sunapee